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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 19 2006

LIN 03 226 51723

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director treated two untimely appeals as motions, and twice reaffirmed the denial of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability and as a member of the professions holding an advanced degree. The petitioner seeks employment as a Chinese-Spanish translator. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree, and that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director first denied the petition on May 7, 2004 ("first decision"). The petitioner filed an appeal on September 24, 2004. Because this appeal was untimely, the director treated it as a motion pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*). The director affirmed the denial on January 25, 2005 ("second decision"), because the petitioner's appeal contained no substantive response to the grounds for denial. The petitioner appealed this second decision on March 1, 2005. Because this second appeal was also untimely, the director once again treated it as a motion. The director again affirmed the denial on April 4, 2005 ("third decision"), addressing evidence from the second appeal, which was more substantive than the first. The petitioner appealed the third decision on May 2, 2005. Because this third appeal is both timely and substantive, the AAO will address the appeal here.

The first issue concerns whether the petitioner qualifies for the underlying immigrant classification. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

In the initial filing, the petitioner indicated that he seeks classification under "exceptional ability status." The director considered the petitioner's qualifications under both applicable classifications, *i.e.*, as a member of the professions holding an advanced degree, and as an alien of exceptional ability. We shall do the same here.

8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner, in this instance, does not claim to hold an advanced degree, but he claims to hold the regulatory equivalent (*i.e.*, a foreign degree equivalent to a U.S. baccalaureate and five years of post-baccalaureate experience). The petitioner's initial submission includes a transcript, showing that the petitioner studied in the "Department of Spanish" at Beijing Foreign Studies University from September 1973 to July 1977. At the conclusion of these studies, the petitioner received a "Diploma of Undergraduate." An evaluation report from Global Credential Evaluators, Inc. (West) states: "At this time in China, universities did not confer degrees, but four-year programs, as in this case, are equivalent to bachelor degrees."

Subsequently, the petitioner has explained that, during his university studies in the 1970s, "China did not have the degree system since 'The Great Cultural Revolution' stopped this system. . . . So I couldn't have the degree even [though] I finished the normal four-year program [of] university study."

In the first decision, the director found that the petitioner cannot qualify as a member of the professions holding an advanced degree because "the evidence indicates that the beneficiary has never been accorded

even a bachelor's degree." In subsequent decisions, the director has adhered to this finding. In the third decision, the director stated: "Whether or not the petitioner had academic credentials which are equivalent to a bachelor's degree, he cannot qualify as an advanced degree professional unless he has a bachelor's degree. The evidence continues to make no indication that he has."

We disagree with the director on this issue. The petitioner has not attempted to take a series of lesser degrees and string them together into the "equivalent" of a bachelor's degree, nor has the petitioner attempted to fashion a "degree" from failed university study or from employment experience in lieu of academic study. Rather, the record demonstrates that the petitioner completed a four-year course of study at a recognized university in China. It is true that the diploma that the petitioner received is not called a "baccalaureate," but what is significant is not the wording of the diploma but rather the amount of study completed. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). If the beneficiary held a two- or three-year degree that was called a "baccalaureate," we would not accept this degree, despite its name, as the equivalent of a U.S. baccalaureate degree.

The petitioner has already explained that, at the time the petitioner studied (the 1970s), the People's Republic of China did not issue "degrees" *per se*. The independent evaluation submitted with the petition corroborates the petitioner's assertion, and the petitioner's latest appeal contains further evidence to establish that Chinese universities began issuing degrees in the early 1980s. The evaluation indicates that the petitioner successfully completed an educational program that is comparable to the baccalaureate program at a U.S. university. We find, therefore, that the petitioner's "diploma" from Beijing Foreign Studies University is, for our purposes, a foreign "degree" equivalent to a U.S. baccalaureate.[1]

This finding, along with evidence of the petitioner's subsequent employment, satisfies the "advanced degree" portion of the classification. This, however, is not sufficient to show that the petitioner qualifies for the classification sought. The petitioner must not only hold an advanced degree (or its equivalent); he must be a member of the professions. "Translator" is not one of the occupations listed in section 101(a)(32) of the Act, and therefore the petitioner cannot qualify as a professional unless he can show that a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner has used his linguistic skills in a variety of settings, from diplomacy to business. These broadly divergent fields have different minimum entry requirements, and it is not self-evident that every occupation that may involve translation meets the relevant definition of a "profession." In a statement accompanying the initial filing of the petition, the petitioner is quite vague about how he intends to use his linguistic skills. He states: "I cannot say whether I can supply ideas for U.S. diplomacy and the international situation. . . . Also I didn't mention whether my business experiences of 10 years does have the opportunity to display in USA" (*sic*). The petitioner then cites statistics about growing Hispanic and Chinese populations in

[1] We stress that this particular analysis is applicable only to the rather unique situation facing individuals who attended Chinese universities between 1972 and 1980. Of course, in any setting in which formal degrees are available, we would expect the individual to have received the degree itself; the AAO would not look favorably upon a situation in which an alien attended a degree-granting institution for four years, but left without a degree, and subsequently claimed the "equivalent" of a degree merely by virtue of enrollment and attendance at that institution.

the United States, and he states that the United States is, therefore, the "amplest scope for my abilities." In terms of specific future plans, the petitioner states that his spouse has opened an acupuncture clinic, and that with his help the clinic will be able to "serve more patients who only speak Spanish."

The vague assertion that changing American demographics present opportunities for an individual fluent in both Spanish and Chinese does not establish that the petitioner's future activities as a translator can reasonably be considered "professional" as the regulations contemplate that term. The petitioner has not met his burden of proof to show that he is, and will continue to be, a member of the professions. Thus, while the petitioner can be said to hold a foreign equivalent degree to a U.S. baccalaureate, and five years of progressive post-baccalaureate experience directly relevant to translation, the petitioner has not shown that he seeks, or is likely to secure, employment as a translator in a professional capacity.

For reasons discussed above, the petitioner has not established that he qualifies as a member of the professions holding an advanced degree or its defined equivalent. We must, therefore, turn to the question of whether he qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.*

The director recognized the petitioner's diploma from Beijing Foreign Studies University in this regard, as well as several later diplomas and certificates regarding further training. The AAO does not take issue with the director's finding.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.*

The director concluded that the petitioner has met this criterion. We cannot, however, agree with this assessment.

When reviewing the petitioner's employment experience, one must keep in mind experience in jobs that require fluency in both Chinese and Spanish is not necessarily the same thing as experience "in the occupation" of Chinese-Spanish translator.

The petitioner claims to have conducted "translation and research" for the Chinese government in Beijing, at the Central Foreign Liaison Department from July 1977 to August 1986 (interrupted by a position as a protocol secretary at the Chinese Embassy in Santiago, Chile from September 1983 to December 1985), and at the China People's Institute of Foreign Affairs from August 1986 to August 1992.

The petitioner submits employment verification letters from the National Center of Talented Personnel Exchanges of the (Chinese) Ministry of Human Resources. One letter indicates that "[f]rom September 1977 to August 1986, [the petitioner] worked in the Central Foreign Liaison Department, holding the position of the Spanish translator." This is less than nine years; given the admitted 27-month interruption to work in Chile, the petitioner spent less than seven years in his position as a Spanish translator.

Regarding the petitioner's work from 1986 to 1992, another letter from the Ministry of Human Resources states that the petitioner "worked in the Chinese People's Institute of Foreign Affairs, holding the position of the Deputy Chief of Asia, Africa and Latin-American Affairs Section." The letter does not indicate that the beneficiary worked as a "translator" during this time, or that Spanish translation occupied a substantial amount of the petitioner's time in the position. While Spanish is widely spoken in Latin America, the same is not true of Africa and Asia. Thus, there is no basis for a finding that the petitioner was, in effect, a full-time translator from 1986 to 1992.

The petitioner submits photographs showing himself with various high-ranking government officials from China and other countries. The petitioner states that several of these photographs show him acting as an interpreter at meetings between Chinese officials and officials from Mexico, Ecuador and Argentina. The photographs establish the petitioner's presence, but not the context. Several other photographs show the petitioner in meetings with delegations from Japan, Nepal, and Australia. The petitioner has never claimed to be a Japanese or Nepalese language interpreter, or to be fluent in those tongues. It appears, therefore, that he was present not as an interpreter, but as an official of the Asia, Africa and Latin-American Affairs Section. Thus, we have no reason to presume or to conclude that the petitioner accumulated full-time experience as a translator during his time as deputy section chief. The petitioner was clearly a ranking diplomat from 1986 to 1992, but diplomacy involves far more than merely acting as an interpreter.

Subsequent letters show that the petitioner was appointed as a "Commercial Representative in Buenos Aires" for Beijing Engineering Consulting Corporation in 1993; the duties for this position involved "industrial, agricultural, trade, finance, real estate, information consultant services and other activities." Once again, there is no evidence that the petitioner's time in this position counts as full-time experience as a translator.

In response to a request for evidence, the petitioner asserts that "[f]rom 1977 to 1992, I was engaged in [the] diplomatic field for fifteen years," but the petitioner seeks classification as an exceptional translator, not as an exceptional diplomat. Once again, we observe that a diplomat is not simply a translator or interpreter, and experience as a diplomat is not full-time experience in the occupation of a translator.

A license to practice the profession or certification for a particular profession or occupation.

The petitioner has submitted copies of various certificates, none of which constitute official licensure or certification as a translator or interpreter. At best, some of these documents verify the petitioner's employment. If such certificates are routinely issued within the occupation, then there is nothing exceptional about holding those certificates.

The petitioner's initial appeal did not address the merits of the director's findings. Therefore, the director's second decision simply reaffirmed the first decision with no further discussion of the merits. Following the second decision, the petitioner states:

> The third criterion is "*A license to practice the profession or certification for a particular profession or occupation.*" For my understanding, no matter is license or certification, the key point is "practice the profession" or for "particular profession or occupation." This is the substantive content. From all of materials that I provided to the immigration office, I had at least three kinds of specialized experience: Translation, Diplomacy and International Trade.

The meaning of the above passage is not entirely clear; the petitioner seems to state that he satisfies the criterion because he has "practice[d] a profession." In any event Citizenship and Immigration Services (CIS) is not obliged to adhere to the petitioner's personal interpretation of the regulations. Simply engaging in a profession (such as diplomacy) is not evidence of exceptional ability. One must establish exceptional ability within a particular field; the petitioner cannot reverse this logic by asserting that one must be exceptional to work in that field. This would be tantamount to claiming that every diplomat is superior to the average diplomat. The contradiction is obvious.

With regard to his "specialized experience," job experience is covered by a separate criterion. As noted elsewhere in this decision, the petitioner has documented less than ten years of full-time experience as an interpreter. Translation appears to have been ancillary to the petitioner's work since 1986.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.*

The petitioner asserts that, because of economic policies in place during his diplomatic career, he was not highly paid. He is silent as to his compensation during his years in private business, but then again there is no evidence that he was a full-time translator in private business so it is not clear that such evidence would be relevant anyway. The petitioner effectively concedes that he cannot meet this criterion.

> *Evidence of membership in professional associations.*

The petitioner states that, while he was a diplomat in China, he "was an active member of two professional associations – Chinese People's Institute of Foreign Affairs (CPIFA) and the Chinese International Exchange Association." As with much of the other evidence of record, these memberships pertain to the petitioner's career as a diplomat rather than as a translator; there is no evidence that one must be a translator to belong to either association, let alone an exceptional translator.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner states that the titles and positions that he has held, both as a diplomat and in business, demonstrate his exceptional ability. These arguments amount to the petitioner's own subjective assessment of his importance to the field, rather than evidence of recognition as described in the regulatory language. The implied argument seems to be that his various titles were, themselves, tantamount to recognition from governmental entities and business organizations. Subsequent submissions from the petitioner have repeated the basic premise that the petitioner must have been exceptional in order to be privileged to attend such high-level government meetings. Employment is not an achievement or contribution in and of itself, nor is it recognition for achievements or contributions. The record contains no evidence that the petitioner has received formal recognition for his achievements or contributions as a translator.

8 C.F.R. § 204.5(k)(3)(iii) states that if the standards listed at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. The petitioner must show that the standards do not readily apply; the petitioner may not arbitrarily substitute his own standards for what constitutes exceptional ability in his field.

In the first decision, the director found that the petitioner had satisfied only two of the six criteria for exceptional ability, and that the petitioner had failed to show that the remaining standards do not readily apply to his occupation. The director stated: "it cannot be concluded that the petitioner qualifies as an alien of exceptional ability as a Spanish translator. He has studied Spanish and has worked as a Spanish translator, but the evidence does not indicate that he holds a degree of expertise significantly above that ordinarily encountered in translators."

On his most recent appeal, the petitioner claims to have met exactly three of the six exceptional ability criteria (degree, experience, and memberships), two of which the director had conceded. Thus, the petitioner's latest submission addresses only one of the six regulatory criteria. The petitioner submits evidence of four memberships that he had not previously claimed, in the Association of Translators of Changzhou, the Association of Translators of Sichuan, the American Translator's Association, and the Midwest Association of Translators and Interpreters. Without going into a discussion of whether one need be an exceptional translator to join these associations, it will suffice here to observe that all of these membership documents are dated 2005, indicating that the petitioner did not join the associations until after his petition had been denied at least once. (The certificates that identify the month of issuance fall after the second denial.) A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The petitioner filed his petition in July 2003, and if he was not eligible in July 2003 then the petition can never be approved; he cannot retroactively establish eligibility by joining several associations in 2005. If the petitioner desires that the director consider these new memberships, then the petitioner should file a new petition, with a more recent filing date that can take the petitioner's 2005 activities into account.

For the reasons discussed above, we must conclude that the petitioner has not shown that he qualifies for the classification sought, either as a member of the professions holding an advanced degree, or as an alien of exceptional ability. Although this finding, by itself, suffices to warrant denial of the petition and dismissal of the appeal, the director has also addressed the petitioner's claim that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now CIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

> From 1977 to 1992, I was engaged in diplomatic work for fifteen years. At first, I worked in the Latin American Bureau of the Central Foreign Liaison Department. Then in 1986, I was accepted into the Chinese People's Institute of Foreign Affairs (CPIFA). . . .

> My specialty was to research the Latin-American political and economic situation, provide reports to the national leadership organization and certain research organizations. . . .
>
> So many times I took the post of the interpreter or the recorder for national senior leaders of China, including The P.R. China President Yang Shangkun, Premiers Zhao Ziyang and Li Peng, National People's Congress Chairman Wan Li . . . and so on. In the diplomatic field of China, only outstanding diplomatic officers can take the post of interpreting and recording for national supreme leaders of China, and also for the post of accompanying foreign senior leaders during their visits in China. These works strongly implied my level of excellence and intelligence. . . .
>
> From 1992 to 2002, I successively served in several companies. . . .
>
> [M]y ability for adeptly control many languages played the very major role.

(*Sic.*) The petitioner asserts that he wrote "several dozen articles" that he is unable to submit because they were "published in restricted internal publications." The record contains no evidence that these articles even exist, and even if such evidence were available, the petitioner has not shown that he is likely to return to a position in which he will resume producing such material.

The petitioner submits several witness letters with his initial filing. Several of these letters are from the petitioner's former professors at Beijing University of Foreign Studies. For example, Professor [redacted] discusses the petitioner's diplomatic career, but offers no evidence that the United States Department of State seeks the petitioner's services as a diplomat. Prof. only comment about the petitioner's future prospects is the observation that Spanish teachers are in demand at American universities. The record does not establish the petitioner's credentials as a language teacher (which is not the same thing as a translator). Other professors praise the petitioner's expertise as a translator and diplomat, but offer no specific information as to how the petitioner would benefit the United States beyond the general assertion that the petitioner possesses valuable skills.

As noted above, the petitioner entered private business after 1992. Some of the witnesses are individuals who have worked with the petitioner during this time. [redacted] general manager of [redacted] Argentina, states that the petitioner "made himself so valuable to our company" with "his language and social skills." [redacted] director and representative agent of [redacted] Argentina, cites figures regarding demand for Chinese translators, and states that the petitioner "frequently helped the local Chinese people as a Spanish translator and a business consular [*sic*]."

Another witness, Dr. [redacted] is an acupuncturist with no demonstrated expertise in translating. Dr. [redacted] discusses the petitioner's career, and asserts that "persons who can directly carry on the communication between Spanish and Chinese are extremely rare."

The petitioner's initial filing does little more than establish his credentials and offer the general assertion that his language skills could be useful. Therefore, the director instructed the petitioner to submit "additional

evidence which persuasively demonstrates that the national interest would be adversely affected if a labor certification were required." The director stated: "Special or unusual knowledge or training does not inherently meet the national interest threshold." The director derived this last assertion from published, binding precedent. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221.

In response to the notice, the petitioner has offered "a detailed employment plan" and an explanation as to why he believes he merits a waiver.

The petitioner states that, in "one to three year[s]," he intends to familiarize himself with U.S. business law and practices and "the situation of local latinos society (*sic*)" and establish a consulting company for Chinese and Latino businesses. With regard to his progress in this plan, the petitioner states "currently I work at my family clinic," learning about the operation of a business and translating for Spanish-speaking clients.

The second stage of the petitioner's plan is to develop liaisons between the government and Chinese and Latino communities, introduce Chinese and South American investors to local government officials, and "write some commentary articles and reviews" based on his research of "international issues."

As to how his intended work will have national scope, the petitioner states:

> I believe I can make an impact on many fields in the U.S. For instance, if I could be a translator in the multilateral international activity . . . would this kind [of] action of mine have made a national impact? If I could take the post of an important translator in oral and writing in those important department such as FDA, NASA or FBI, Would my work have made an impact in national scope? Also if I could hold the position of the multilingual translator in the international commercial negotiations, or if I could be a researcher to make the contributions to the Spanish and Chinese teaching, would these have made a national impact?
>
> My answer is positive. I do can do these excellent jobs if the situation is available to me.

(*Sic*). The petitioner's argument seems to be that, if he is placed in situations of national importance, then he will be able to have a national impact. He does not explain what progress he has made toward holding such positions in the United States, nor does he show that any of the aforementioned federal government organizations have expressed any interest in employing him at that level. He repeats the claim that translators fluent in both Chinese and Spanish are rare in the United States, and that he therefore stands above others in his field.

With regard to his present work at his wife's clinic, he states:

> But from some point to say, who knows this clinic might be an important site when something happen at someday. For example, after being attacked by an assassin, the

> American former president Reagan was urgently delivered to a local hospital to carry on the rescue. Could you think the doctors who saved the president Reagan's life were making the national compact? The answer is positive! Who knows if this small clinic might treat an important patient someday?

(*Sic*). Leaving aside the fact that the petitioner's spouse runs an acupuncture clinic rather than an emergency room or surgical hospital, there are several flaws in the petitioner's assertions. First, the speculation that "this small clinic might treat an important patient someday" is purely conjectural; there is nothing in the record to suggest that the clinic is likely to be involved in an event comparable in significance to treating a president's gunshot wounds. Nothing of such importance has happened at the clinic so far, and therefore there has been no demonstrated national impact. Also, while it is conceivable that "an important patient" may visit the clinic, the same could be said of any health care facility, making this a blanket statement rather than an argument specific to this petitioner. Even if "an important patient" visits the clinic, the petitioner is not analogous to the surgeons who saved President Reagan's life in 1981. The petitioner claims no expertise in health care. The odds that "an important patient" will visit that particular clinic, under such circumstances that events of national importance hinge on Chinese-Spanish translation, appear to be remote to say the least. Almost anyone could, conceivably, find himself or herself in a position to influence the course of history by being in the right place at the right time. The surgeons who saved President Reagan found themselves in such a position, but so did the person who sold the offending weapon to John W. Hinckley. For most people, surgeons and translators included, national impact is not an intended or anticipated part of the daily working routine.

In the first decision, the director acknowledged the intrinsic merit of the petitioner's work as a translator, but found that the petitioner's work "in his wife's medical clinic" is local rather than national in scope. The director noted the petitioner's future plans, but concluded "[t]he evidence does not establish that his plans have developed to the point that it could be concluded that he will likely make a national impact." The director also noted that "the petitioner did not respond to a specific Service request to list the specific achievements . . . which set him apart from other translators."

As noted above, the petitioner's first appeal contained no substantive response to the director's findings. Following the director's second decision, the petitioner repeats the assertion that individuals who are "able to do Spanish and Chinese translation both [are] very difficult to find in the US." A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *Matter of New York State Dept. of Transportation* at 215, 218.

Furthermore, the petitioner asserts "the benefits of a communication system are from the whole system, which is made by the sum of every individual's work." As with many of the petitioner's other arguments, this is a general assertion which does nothing to set the petitioner apart from others in his field. Congress created no automatic blanket waiver for Chinese-Spanish translators, and the petitioner has offered no persuasive reason to conclude that he will serve the national interest to a greater degree than would other qualified Chinese-Spanish translators.

In the third denial, the director stated that the petitioner has not established the national scope of his work, or that the petitioner's work serves the national interest to a greater extent than that of other qualified workers in the field. The director stated that the petitioner "reported a shortage of U.S. workers with his skills, but that is the situation which the labor certification is intended to address, not a reason for avoiding that process."

In the most recent appeal, the petitioner asserts that he has already explained how his important diplomatic positions have been national in scope. Because the petitioner has not held a diplomatic position since 1992, discussions of the petitioner's past positions cannot establish prospective national benefit. We acknowledge that the petitioner seeks a waiver of the job offer requirement, but we cannot ignore the employment situation for diplomats in the United States. Diplomacy is not a privatized field of endeavor in which one can work for a variety of employers, or set up one's own business. The only U.S. employer of diplomats is the United States government. The record contains no evidence to show that the government has any interest in hiring the petitioner as a diplomat, and therefore we have no reason to believe that the petitioner has any realistic prospects for employment as a diplomat. To whatever extent the petitioner has provided specific information about his intended future work, the petitioner has discussed translation rather than in diplomacy.

The petitioner acknowledges that his work at his wife's clinic does not "have any national significance," but he asserts that in the future his work may be much more important. The petitioner claims that he recently declined an offer to become the senior translator at the Mexican subsidiary of an Indiana-based company owned by an individual from Taiwan. The petitioner does not explain how this position would have been national in scope (rather than being of benefit primarily to the company and its clients).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.